Remarks

Preliminary Remarks

Claims 1-20 are pending in the application. The issues in the application are as follows:

- Claims 1-5, 8-12, and 15-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application 6,275,853 to Beser et al. (hereinafter, "Beser") in view of U.S. Patent Application 6,336,175 to Shaath et al. (hereinafter, "Shaath")

- Claims 6-7, 13-14 and 19-20 have been objected to as being dependent upon a rejected based claim, but were deemed allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response, Applicant herby traverses the outstanding rejections and requests reconsideration and withdrawal in light of the amendments and remarks contained herein.

Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-5, 8-12, and 15-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Beser in view of Shaath.

The Applicant respectfully disagrees that claims 1-5, 8-12, and 15-18 are obvious over Beser in view of Shaath as will be described in detail below.

As a starting point, MPEP 706.02(j) states:

> "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, <u>the prior art reference</u> (or references when combined) <u>**must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure.**</u>" (Emphasis added.)

In the following arguments, the Applicant will focus in particular on independent claims 1, 8 and 15 as the Applicant believes those claims to be allowable over Beser in view of Shaath. It is axiomatic that any dependent claim which depends from an allowable base claim is also allowable, and therefore the Applicant does not believe it is necessary to present arguments in favor of each and every claim that depends from claim 1, 8 and 15 respectively.

Claim 1

The Applicant contends that claim 1, and claims 2-5 that depend therefrom, are not rendered obvious over Beser in view of Shaath. Claim 1 recites:

> A method for transferring data between a local device and a remote device over a network, said local device having a communication architecture having at least an application layer and an interceptor layer, said method comprising:
>
> receiving by said interceptor layer a first command from said application layer, said first command specifying a first plurality of identifiers wherein said first command is configured to return an associated value for each identifier of said plurality of identifiers; and
>
> issuing a second command by said interceptor layer, said second command specifying a second plurality of identifiers wherein said second command is configured to return a **next** identifier and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command.
>
> (Emphasis added).

The Office action states that Beser teaches "a method for transferring data between a local device and a remote device over a network." The Office action also states that Beser teaches that a "command specifies a plurality of identifiers" (Office action, page 2). The Office action further admits that Beser "fails to teach local device

having a communication architecture having at least an application layer and an interceptor layer." The Office action claims that Shaath teaches limitations of claim 1 absent from Beser. However, Shaath does not cure the deficiencies of Beser.

Specifically, Shaath does not teach or suggest that a first command received to an interceptor layer specifies "a first plurality of identifiers" or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 1. In fact, Shaath does not disclose any "identifiers" that are associated with a request. Instead, Shaath discloses that an "application layer communicates with the file system layer for performing read operations and write operations with storage media," and that "[e]ach file system access request that is transmitted from the application layer to the [f]ile system layer is intercepted by the trap layer" where "restrictions relating to access privileges are implemented. (Shaath, col 7, lines 28-45.) Clearly, Shaath does not disclose a first command received to an interceptor layer that specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 1.

Additionally, while Shaath discloses that "some requests are blocked and error messages are returned to the application layer", and "[o]ther requests are modified and the modified request passed onto the file system," Shaath does not disclose that a second issued command "is configured to return a _**next**_ identifier and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command," as recited in Applicant's claim 1. For example, Shaath cites that "[w]hen a data store is read only, a request to open a file for read write access is modified to an open file for read-only access; a request to delete a file is blocked and an error message is returned." (Shaath, col 7, lines 28-45.) Specifically, neither a "_**next**_" identifier nor an "**_associated value_**" are disclosed by Shaath, as claimed by the Office

action. Furthermore, as described in Applicant's specification, the purpose of a **_next_** identifier is to **avoid** return of an error message (see, Specification, page 9. lines 6-9), whereas the system described by Shaath _generates_ an error message.

Accordingly, since Applicant's claim 1 includes limitations not disclosed by Besser or Shaath, there can be no obviousness of Applicant's claim 1 in light of these references.

Furthermore, as stated above, in order to maintain a rejection under 35 U.S.C. § 103(a), the cited art **must** teach or suggest **all** the claim limitations, **and** the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art _and not based on applicant's disclosure_. However, it is evident that the references could only have been selected and combined to reject the claims by using the impermissible hindsight knowledge learned from Applicant's teachings. For example, to make up for the deficiencies in Beser, it appears that the Examiner selected Shaath for its use of a "trap layer" even though the "trap layer" described by Shaath does not function in the same way as an "interceptor layer" as recited in Applicants' claim 1. Specifically, the "trap layer" of Shaath does not issue a second command "specifying a second plurality of identifiers wherein said second command is configured to return a **next** identifier and associated value for each identifier," as recited in Applicant's claim 1. Clearly, Applicant's teachings were impermissibly used to combine the references in an attempt to piece together Applicant's claim 1.

As previously stated, in order to support a § 103(a) rejection, there must be some teaching, suggestion, or motivation, other than Applicant's teachings, for modifying a cited reference, or combining references, to achieve the claimed invention. The Office action does not indicate any suggestion or motivation in the prior art of record, either explicit or otherwise, for modifying the references, or combining the references, in a

manner that would achieve the claimed invention. The Examiner has not pointed out any teaching in the references as to how such a modification or combination might be accomplished, or what might be accomplished by such a combination that is even relevant to Applicant's claim 1.

Moreover, the Office action alleges that it would be obvious to one of ordinary skill at the time the invention was made to combine the teaching of Shaath with the invention of Beser "in order not to alter data stored." (Office Action, page 3, paragraph 2.) However, it is clear from the Applicant's disclosure that the invention is directed towards "improving the reliability of a block transfer of data from a server to a client utilizing SNMP protocol objects" (page 1, lines 4-7), and has nothing to do with preserving data. In fact, the portion of Shaath (col. 2, lines 10-20) cited in the Office action to support the allegation that it would be obvious to one of skill in the art to combine the references appears to be directed to a need that is met by the invention of Shaath alone (i.e., preserving data when accessing the data). Furthermore, there is no reason why one would combine the teachings of Shaath (directed towards "a method of providing restricted access to a storage medium in communication with a computer" – Shaath, claim 1 preamble) with the teachings of Beser (directed towards "a system for managing a network" – Beser, claim 1 preamble), or visa-versa. Moreover, there is no reason why anyone would apply the teachings of Shaath (for "a method of providing restricted access to a storage medium in communication with a computer") to an invention pertaining to "a method for transferring data between a local device and a remote device over a network" (Applicant's claim 1 preamble). Accordingly, there is simply no suggestion or motivation whatsoever (either in the references or to one of skill in the art) to combine and/or modify the references to arrive at Applicant's claim 8.

Furthermore, even if the references were combinable, which they are not, the result would not reach the Applicant's claim 1. A combination of Beser and Shaath

would merely result in a method of restricting file access to a storage medium that is implemented between a local device and a remote device over a network, which is not what is claimed by the Applicant. In order to reach the limitations of Applicant's claim 1, the references would require modification far beyond what is taught or suggested by Beser or Shaath, or would be apparent to one of skill in the art at the time the invention was made. The Applicant therefore strongly disagrees with the Examiner's contention that it would be "obvious to one with ordinary skill in the art" to modify or combine the references to arrive at Applicant's claim 1.

In light of the above, the rejection of claim 1 as being obvious over Beser in view of Shaath is unsupportable, and the Applicant therefore requests that the rejection of claim 1 be withdrawn. Since it is axiomatic that a claim which depends from an allowable base claim cannot be obvious, the Applicant further requests that the rejection of claims 2-5 (which depend from claim 1) also be withdrawn.

Claim 8

The Applicant contends that claim 8, and claims 9-12 that depend therefrom, are not rendered obvious over Beser in view of Shaath. Claim 8 recites:

A system for improving reliability of data transfer, said system comprising:
    an interface;
    at least one processor;
    a memory coupled to said at least one processor;
    an interceptor client residing in said memory and executed by said at least one processor, wherein said interceptor client is configured to receive by said interceptor layer a first command from said application layer, said first command specifying a first plurality of identifiers wherein said first command is configured to return an associated value for each identifier of said plurality of identifiers, and to issue a second command by said interceptor layer, said second command specifying a second plurality of identifiers wherein said second command is configured to return a *next*

<u>identifier</u> and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command.
(Emphasis Added).

The Office action states that Beser teaches "a method for transferring data between a local device and a remote device over a network." The Office action also states that Beser teaches that a "command specifies a plurality of identifiers" (Office action, page 2). The Office action further admits that Beser "fails to teach local device having a communication architecture having at least an application layer and an interceptor layer." The Office action claims that Shaath teaches limitations of claim 8 absent from Beser. However, Shaath, as described above does not cure the deficiencies of Beser.

Specifically, as described above, Shaath does not teach or suggest that a first command received to an interceptor layer specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 8. In fact, Shaath does not disclose any "identifiers" that are associated with a request. Instead, Shaath discloses that an "application layer communicates with the file system layer for performing read operations and write operations with storage media," and that "[e]ach file system access request that is transmitted from the application layer to the [f]ile system layer is intercepted by the trap layer" where "restrictions relating to access privileges are implemented. (Shaath, col 7, lines 28-45.) Shaath does not disclose a first command received to an interceptor layer that specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 8. In fact, Shaath does not disclose any "identifiers" that are associated with a request. Instead, Shaath discloses that an "application layer communicates with the file system layer for performing read operations and write

operations with storage media," and that "[e]ach file system access request that is transmitted from the application layer to the [f]ile system layer is intercepted by the trap layer" where "restrictions relating to access privileges are implemented. (Shaath, col 7, lines 28-45.) Clearly, Shaath does not disclose a first command received to an interceptor layer that specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 8.

Additionally, while Shaath discloses that "some requests are blocked and error messages are returned to the application layer", and "[o]ther requests are modified and the modified request passed onto the file system," Shaath does not disclose that a second issued command "is configured to return a **_next_** identifier and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command," as recited in Applicant's claim 8. For example, Shaath states that "[w]hen a data store is read only, a request to open a file for read write access is modified to an open file for read-only access; a request to delete a file is blocked and an error message is returned." (Shaath, col 7, lines 28-45.) Specifically, neither a "**_next_**" identifier, nor an "**_associated value_**", are disclosed by Shaath. Furthermore, as described in Applicant's specification, the purpose of a **_next_** identifier is to **avoid** return of an error message (see, Specification, page 9. lines 6-9), whereas the system described by Shaath _generates_ an error message.

Accordingly, since Applicant's claim 8 includes limitations not disclosed by Besser or Shaath, there can be no obviousness of Applicant's claim 8 in light of these references.

As stated above, in order to maintain a rejection under 35 U.S.C. § 103(a), the cited art **must** teach or suggest **all** the claim limitations, **and** the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

be found in the prior art *and not based on applicant's disclosure*. However, it is evident that the references could only have been selected and combined to reject the claims by using the impermissible hindsight knowledge learned from Applicant's teachings. For example, to make up for the deficiencies in Beser, it appears that the Examiner selected Shaath for its use of a "trap layer" even though the "trap layer" described by Shaath does not function in the same way as an "interceptor layer" as recited in Applicants' claim 8. Specifically, the "trap layer" of Shaath does not issue a second command "specifying a second plurality of identifiers wherein said second command is configured to return a **next** identifier and associated value for each identifier," as recited in Applicant's claim 8. Clearly, Applicants' teachings were impermissibly used to combine the references in an attempt to piece together Applicants' claim 8.

As previously stated, in order to support a § 103(a) rejection, there must be some teaching, suggestion, or motivation, other than Applicant's teachings, for modifying a cited reference, or combining references, to achieve the claimed invention. The Office action does not indicate any valid suggestion or motivation in the prior art of record, either explicit or otherwise, for modifying the references or combining the references in a manner that would achieve the claimed invention, or point out any teaching as to how such a modification or combination might be accomplished, or what might be accomplished by such a combination, that is relevant to Applicant's claim 8.

The Examiner alleges that it would be obvious to one of ordinary skill at the time the invention was made to combine the teaching of Shaath with the invention of Beser "in order not to alter data stored" (Office action, page 3, paragraph 2). However, the Applicant contends that this alleged motivation for combining the references is completely immaterial, since the claimed invention has nothing to do with "not [ ] alter[ing] data stored." In fact, the portion of Shaath cited by the Office action to support such an allegation (col. 2, lines 10-20) appears to be directed to a need that is met by

1   the invention of Shaath alone. As to any motivation to modify Beser with the teachings

2   of Shaath (or visa versa) relative to Applicant's claim 8, claim 8 is directed towards "a

3   system for improving reliability of data transfer". Beser provides for "a system for

4   managing a network" (Beser, claim 1); Shaath provides for "a method of providing

5   restricted access to a storage medium in communication with a computer". There is

6   simply no reason why one would modify Beser's "system for managing a network" with

7   Shaath's teachings for "providing restricted access to a storage medium in

8   communication with a computer", or visa-versa. Moreover, there is no reason why

9   anyone would apply the teachings of Shaath (for "a method of providing restricted

10 access to a storage medium in communication with a computer") to an invention

11 pertaining to "a system for improving reliability of data transfer" (Applicant's claim 8

12 preamble). Accordingly, there is simply no suggestion or motivation whatsoever (either

13 in the references or to one of skill in the art) to combine and/or modify the references to

14 arrive at Applicant's claim 8.

15   Furthermore, even if the references were combinable, which they are not, the

16 result would not reach the Applicant's claim 8. A combination of Beser and Shaath

17 would merely result in a method of restricting file access to a storage medium that is

18 implemented between a local device and a remote device over a network, which is not

19 what is taught or claimed by Applicant's claim 8. In order to reach the limitations of

20 Applicant's claim 8, the references would require modification far beyond what is taught

21 or suggested by Beser or Shaath. The Applicant therefore strongly disagrees with the

22 Examiner's contention that it would be "obvious to one with ordinary skill in the art" to

23 modify or combine the references to arrive at Applicant's claim 8.

24   In light of the above, the rejection of claim 8 as being obvious over Beser in view

25 of Shaath is unsupportable, and the Applicant therefore requests that the rejection of

claim 8 be withdrawn. Since it is axiomatic that a claim which depends from an

allowable base claim cannot be obvious, the Applicant further requests that the rejection of claims 9-12 (which depend from claim 8) also be withdrawn.

Claim 15

The Applicant contends that claim 15, and claims 16-18 that depend therefrom, are not rendered obvious over Beser in view of Shaath. Claim 15 recites:

> A computer readable storage medium on which is embedded one or more computer programs, said one or more computer programs implementing a method for improving reliability of data transfer, said one or more computer programs comprising a set of instructions for:
>
> receiving by said interceptor layer a first command from said application layer, said first command specifying a first plurality of identifiers wherein said first command is configured to return an associated value for each identifier of said plurality of identifiers; and
>
> issuing a second command by said interceptor layer, said second command specifying a second plurality of identifiers wherein said second command is configured to return a next identifier and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command.

As discussed above with reference to claim 1, The Office action states that Beser teaches "a method for transferring data between a local device and a remote device over a network." The Office action also states that Beser teaches that a "command specifies a plurality of identifiers" (Office action, page 2). The Office action further admits that Beser "fails to teach local device having a communication architecture having at least an application layer and an interceptor layer." The Office action claims that Shaath teaches limitations of claim 15 absent from Beser. However, Shaath does not cure the deficiencies of Beser.

Specifically, Shaath does not teach or suggest that a first command received to an interceptor layer specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 15. In fact, Shaath does not disclose any "identifiers" that are associated with a request. Instead, Shaath discloses that an "application layer communicates with the file system layer for performing read operations and write operations with storage media," and that "[e]ach file system access request that is transmitted from the application layer to the [f]ile system layer is intercepted by the trap layer" where "restrictions relating to access privileges are implemented. (Shaath, col 7, lines 28-45.) Clearly, Shaath does not disclose a first command received to an interceptor layer that specifies "a first plurality of identifiers", or that the "first command is configured to return an associated value for each identifier of said plurality of identifiers," as recited in Applicant's claim 15.

Additionally, while Shaath discloses that "some requests are blocked and error messages are returned to the application layer", and "[o]ther requests are modified and the modified request passed onto the file system," Shaath does not disclose that a second issued command "is configured to return a _**next**_ identifier and associated value for each identifier of said another plurality of identifiers in response to said receiving of said first command," as recited in Applicant's claim 15. For example, Shaath cites that "[w]hen a data store is read only, a request to open a file for read write access is modified to an open file for read-only access; a request to delete a file is blocked and an error message is returned." (Shaath, col 7, lines 28-45.) Specifically, neither a "_**next**_" identifier nor an "_**associated value**_" are disclosed by Shaath, as claimed by the Office action. Furthermore, as described in Applicant's specification, the purpose of a _**next**_ identifier is to **avoid** return of an error message (see, Specification, page 9. lines 6-9), whereas the system described by Shaath _generates_ an error message.

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Accordingly, since Applicant's claim 15 includes limitations not disclosed by Beser or Shaath, there can be no obviousness of Applicant's claim 15 in light of these references.

As stated above, in order to maintain a rejection under 35 U.S.C. § 103(a), the cited art **must** teach or suggest **all** the claim limitations, **and** the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art *and not based on applicant's disclosure*. However, it is evident that the references could only have been selected and combined to reject the claims by using the impermissible hindsight knowledge learned from Applicant's teachings. For example, to make up for the deficiencies in Beser, it appears that the Examiner selected Shaath for its use of a "trap layer" even though the "trap layer" described by Shaath does not function in the same way as an "interceptor layer" as recited in Applicants' claim 15. Specifically, the "trap layer" of Shaath does not issue a second command "specifying a second plurality of identifiers wherein said second command is configured to return a **next** identifier and associated value for each identifier," as recited in Applicant's claim 15. Clearly, Applicant's teachings were impermissibly used to combine the references in an attempt to piece together Applicant's claim 15.

As previously stated, in order to support a § 103(a) rejection, there must be some teaching, suggestion, or motivation, other than Applicant's teachings, for modifying a cited reference, or combining references, to achieve the claimed invention. The Office action does not indicate any suggestion or motivation in the prior art of record, either explicit or otherwise, for modifying the references or combining the references in a manner that would achieve the claimed invention, or point out any teaching as to how such a modification or combination might be accomplished, or what might be accomplished by such a combination that is even relevant to Applicant's claim 15.

The Examiner alleges that it would be obvious to one of ordinary skill at the time the invention was made to combine the teaching of Shaath with the invention of Beser "in order not to alter data stored" (Office action, page 3, paragraph 2). However, the Applicant contends that this alleged motivation for combining the references is completely immaterial, since the claimed invention has nothing to do with "not [ ] alter[ing] data stored." In fact, the portion of Shaath cited by the Office action to support such an allegation (col. 2, lines 10-20) appears to be directed to a need that is met by the invention of Shaath alone. As to any motivation to modify Beser with the teachings of Shaath (or visa versa) relative to Applicant's claim 15, claim 15 is directed towards "computer programs implementing a method for improving reliability of data transfer". Beser provides for "a system for managing a network" (Besser, claim 1); Shaath provides for "a method of providing restricted access to a storage medium in communication with a computer". There is simply no reason why one would modify Beser's "system for managing a network" with Shaath's teachings for "providing restricted access to a storage medium in communication with a computer" (or visa-versa). Moreover, there is no reason why anyone would apply the teachings of Shaath (for "a method of providing restricted access to a storage medium in communication with a computer") to an invention pertaining to "computer programs implementing a method for improving reliability of data transfer" (Applicant's claim 15 preamble). Accordingly, there is no suggestion or motivation whatsoever to combine and/or modify the references to arrive at Applicant's claim 15.

Furthermore, even if the references were combinable, which they are not, the result would not reach the Applicant's claim 15. A combination of Beser and Shaath would merely result in a method of restricting file access to a storage medium that is implemented between a local device and a remote device over a network, which is not what is taught or claimed by Applicant's claim 15.

In light of the above, the rejection of claim 15 as being obvious over Beser in view of Shaath is unsupportable, and the Applicant therefore requests that the rejection of claim 15 be withdrawn. Since it is axiomatic that a claim which depends from an allowable base claim cannot be obvious, the Applicant further requests that the rejection of claims 16-18 (which depend from claim 15) also be withdrawn.

Summary

The Applicant believes that this response constitutes a full and complete response to the Office action, and therefore requests timely allowance of claims 1 through 20.
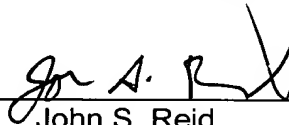
The Examiner is respectfully requested to contact the below-signed representative if the Examiner believes this will facilitate prosecution toward allowance of the claims.

Respectfully submitted,

Ernest F. Covelli

Date: <u>October 29, 2004</u>   By _____
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